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SUPREME COURT OF THE UNITED STATES

October Term, 1944

No. 177

J. M. LEDBETTER, JR., ADMINISTRATOR C. T. A.
OF THE ESTATE OF ROBERT L. STEELE, III, AND
THE STATE OF NORTH CAROLINA AND THE
CLERK OF THE SUPERIOR COURT OF BLADEN
COUNTY, ex rel., AND FOR THE USE AND BENE-
FIT OF, J. M. LEDBETTER, JR., ADMINISTRATOR
C. T. A. OF THE ESTATE OF ROBERT L.
STEELE, III, Petitioners,

v.

FARMERS BANK AND TRUST COMPANY, A COR-
PORATION, AND FEDERAL RESERVE BANK OF
RICHMOND, A CORPORATION, Respondents.

MOTION FOR LEAVE TO FILE MOTION TO VACATE ORDER OF OCTOBER 9, 1944.

The petitioners respectfully show unto the Court:

1. That the decision of the Circuit Court of Appeals for the Fourth Circuit was rendered on April 11, 1944, and that the petition for certiorari was filed in this Court on June 17, 1944. (R. 16.)

2. That, at the time the briefs in this case were filed in the Circuit Court of Appeals and the case was argued there, petitioners' counsel were not cognizant of the decisions of the Supreme Court of North Carolina in the cases of *Williams v. Blue*, 173 N. C. 452, 92 S. E. 270, and *Dillon v. Winston-Salem*, 221 N. C. 512, 20 S. E. 2d

845; that, consequently, petitioners did not cite those cases to the Circuit Court of Appeals, nor did they cite any other North Carolina cases of similar import, and the Circuit Court of Appeals failed to consider these cases.

3. That petitioners' counsel did not discover the cases referred to in paragraph 2 hereof until June 15, 1944; that, on said date, the thirty days allowed for the losing party to petition for rehearing in the Circuit Court of Appeals for the Fourth Circuit under Rule 19 of said Court had expired.

WHEREFORE, petitioners pray the Court that they be allowed to file herein a motion to vacate the order of October 9, 1944 to the end that certiorari may be granted, the judgment of the Court below vacated and the cause remanded to the Circuit Court of Appeals for the Fourth Circuit, for the consideration by that Court of the application of the cases referred to in paragraph 2 hereof.

WHITEFORD S. BLAKENEY,
GEORGE S. STEELE,
Counsel for Petitioners.

NORTH CAROLINA
RICHMOND COUNTY

George S. Steele, being first duly sworn, deposes and says that he has read the foregoing and annexed motion for leave to file a motion to vacate the order of October 9, 1944, and knows the contents thereof; that the same is true of his own knowledge; that this verification is made by him instead of by one of the petitioners because the matters stated therein are within his personal knowledge and are not within the personal knowledge of any of the petitioners.

GEORGE S. STEELE.

Sworn to and subscribed before me, Thomas L. Covington, Clerk of the Superior Court of Richmond County, North Carolina, which is a court of record, having a seal which is hereto attached, and is the court of general jurisdiction of Richmond County, North Carolina, this the eleventh day of May, 1945.

(L.S.)

THOMAS L. COVINGTON.

SUPREME COURT OF THE UNITED STATES

October Term, 1944

No. 177

J. M. LEDBETTER, JR., ADMINISTRATOR C. T. A. OF THE ESTATE OF ROBERT L. STEELE, III, AND THE STATE OF NORTH CAROLINA AND THE CLERK OF THE SUPERIOR COURT OF BLADEN COUNTY, ex rel., AND FOR THE USE AND BENEFIT OF, J. M. LEDBETTER, JR., ADMINISTRATOR C. T. A. OF THE ESTATE OF ROBERT L. STEELE, III,

Petitioners,

v.

FARMERS BANK AND TRUST COMPANY, A CORPORATION, AND FEDERAL RESERVE BANK OF RICHMOND, A CORPORATION,

Respondents.

MOTION TO VACATE ORDER OF OCTOBER 9, 1944¹

From the verified motion for leave to file this motion, it appears that the Circuit Court of Appeals for the Fourth Circuit failed to consider the cases of *Dillon v. Winston-Salem*, 221 N. C. 512, 20 S. E. 2d 845, and

¹ This is not a petition for rehearing as a petition for rehearing invites a reconsideration on the original record. *Atchison, Topeka and Santa Fe R. Co. v. United States*, 284 U. S. 248, 259.

Williams v. Blue, 173 N. C. 452, 92 S. E. 270, because of the failure of petitioners' counsel to discover them and cite them to that court.

As appears from the first petition for rehearing filed by petitioners herein, these cases are controlling as far as this case is concerned, for they hold that he who controls another is liable for the other's torts, regardless of whether or not the principal-agent or master-servant relationship exists between the two. Thus, it seems almost certain that if petitioners' counsel had relied upon these cases in the Circuit Court of Appeals, that court would have reversed the order of the district court instead of affirming it.

In the instant case petitioners alleged in their complaint that the late Robert L. Steele, III, was damaged by the negligence of J. R. McQueen, a receiver of the said Steele's property appointed by the Superior Court of Bladen County, North Carolina. (R., 4 and 5.) Petitioners also alleged that while the said McQueen was acting as receiver he was acting under the direction and control of respondents. (R., 3.) On motion, the district court dismissed the action as to the respondents on the ground that such allegations did not constitute a cause of action against respondents. (R., 10 and 11.) The Circuit Court of Appeals affirmed the decision. (R., 16-23.)

If, as the decisions of the Supreme Court of North Carolina in the cases of *Dillon v. Winston-Salem* and *Williams v. Blue* hold, he who controls a third person is liable for his torts, then, obviously under the facts alleged in this case respondents are liable to petitioners for the negligence of the receiver. But we do not ask this court to decide this question of law. We merely ask this court to vacate the judgment of the court below and remand this case to the Circuit Court of Appeals in order that it may decide the question.

While it is well understood that this court cannot grant certiorari in every case in which it disagrees with the decision of the court below, and it is generally understood by the bar of this court that this court has time only to review those cases which are of national importance, still in the interests of justice, this court can, without the expenditure of a great deal of time, grant certiorari in this case, vacate the judgment of the Circuit Court of Appeals for the Fourth Circuit, and remand this cause to that court in order that it may consider the applicable North Carolina decisions.

It could work no hardship on respondents if this court should grant this motion, for if the Circuit Court of Appeals should decide that the decisions of the Supreme Court of North Carolina in the cases of *Dillon v. Winston-Salem* and *Williams v. Blue* are not controlling in this case, then the judgment of the district court would again be affirmed.

On the other hand, if this court should deny this motion, it would mean that petitioners are without remedy to have a hearing on the merits at which the cases of *Dillon v. Winston-Salem* and *Williams v. Blue* are considered.

WHEREFORE, petitioners pray the Court that the order of October 9, 1944 be vacated, certiorari be granted, the judgment of the Circuit Court of Appeals be vacated, and that the case be remanded to the Circuit Court of Appeals in order that that court may consider the North Carolina decisions of *Dillon v. Winston-Salem* and *Williams v. Blue*.

WHITEFORD S. BLAKENEY,
GEORGE S. STEELE,
Counsel for Petitioners.



(14)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

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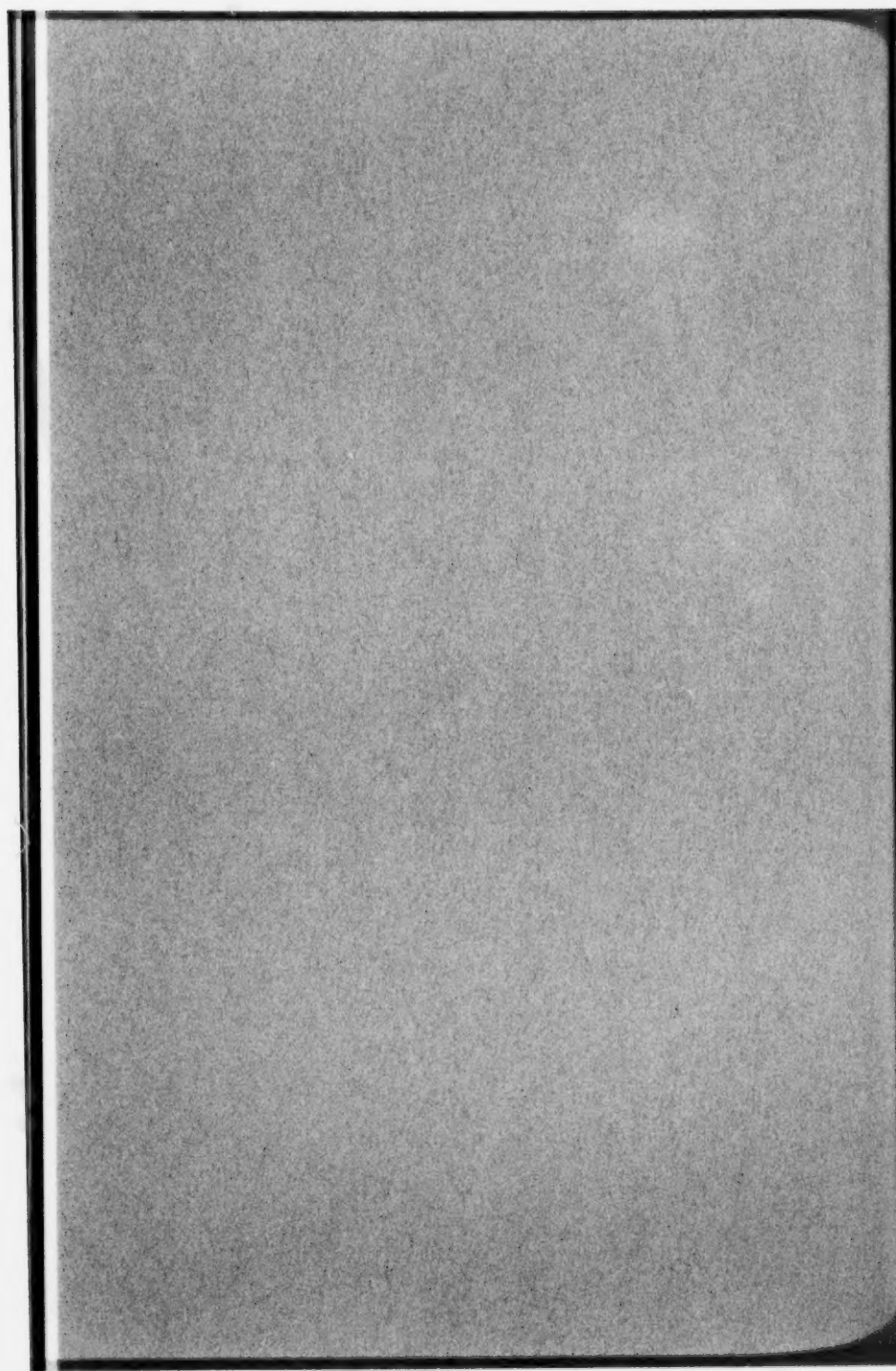
Petitioners,

v.

FARMERS BANK & TRUST COMPANY, A CORPO-
RATION, AND FEDERAL RESERVE BANK OF
RICHMOND, A CORPORATION,

Respondents.

**MOTION FOR LEAVE TO FILE SECOND PETITION
FOR REHEARING AND SECOND PETITION
FOR REHEARING**



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FARMERS BANK & TRUST COMPANY, A CORPO-
RATION, AND FEDERAL RESERVE BANK OF
RICHMOND, A CORPORATION,

Respondents.

MOTION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING

Prayer

Petitioners respectfully move the Court that they be allowed to file herein a second petition for rehearing.

Reason Relied On for Motion

It is understandable that this Court will refuse certiorari, nothing more being shown than that the lower court has failed to follow applicable local decisions, because that is mere error of law. And mere error of law is not sufficient to

induce this Court to grant a petition for certiorari, however costly to litigants it may be.¹

Upon the matter here involved, however, the petitioners show more—namely, a conflict of decisions between the Fourth and the Sixth Circuit Courts of Appeals.² In such situations, certiorari ordinarily will be granted, for this Court has said: “* * * jurisdiction to bring up cases by certiorari from the Circuit Courts of Appeals was given to this Court in order ‘to secure uniformity of decision.’ * * *.”³

It must be, therefore, that this Court has denied petitioners’ application for certiorari only because this Court considered that the question in conflict is moot in the instant case.

Petitioners earnestly represent to the Court that the question here in conflict is not moot and, for the purpose of so demonstrating, pray that they be allowed to file a second petition for rehearing, the second petition for rehearing being annexed hereto.

WHITEFORD S. BLAKENEY,

GEORGE S. STEELE,

Counsel for Petitioners.

¹ *Skidmore v. Swift & Company*, certiorari denied, 320 U. S. 763, rehearing denied, 320 U. S. 812, reversed, 323 U. S. _____, 65 S. Ct. 161.

² See cases cited *post*, p. 3.

³ *Ruhlin v. New York Life Insurance Company*, 304 U. S. 202, 206.

